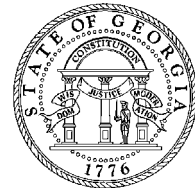


# GEORGIA REVENUE QUARTERLY



Sonny Perdue, Governor

Bart L. Graham, Commissioner

## ***Tax Laws Passed During 2004 Georgia Legislative Session***

### **Omnibus Bill**

**State and Local Tax Revision Act of 2004 - House Bill 1437:** Bill amends O.C.G.A. §§ 48-1-2, 48-2-32, 48-7-57.1, 48-7-86, 48-7A-3, 50-18-72.

#### **Section 2 – Annual Update Provision:**

Brings Georgia tax law into agreement with federal Internal Revenue Code (I.R.C.) as it existed on Jan. 1, 2004. This update includes all applicable provisions of federal tax legislation signed into law during 2003 (as they relate to the computation of federal adjusted gross income and federal taxable income). Specifically excludes I.R.C. Section 168(k) (30 percent and 50 percent bonus depreciation) and Section 1400L (tax benefits for the New York Liberty Zone). Further, it treats I.R.C. Section 179(b) as it was in effect before enactment of the Jobs and Growth Tax Relief Reconciliation Act of 2003. This means Georgia continues to use a \$25,000 limit for the Section 179 deduction and a \$200,000 limit for the phase out of the Section 179 deduction. This section of the bill becomes effective when signed by the Governor or July 1, 2004, whichever occurs first. Section is applicable to taxable years beginning on or after Jan. 1, 2004.

**Section 3 – Bad Check Fee:** Amends O.C.G.A. § 48-2-32 to allow the Department of Revenue to charge a minimum of \$25 for a returned check because of insufficient funds instead of the lesser of the amount of the check or \$15. Effective when signed by the Governor or July 1, 2004, whichever occurs first.

#### **Section 4 – Penalty for Failure to Remit Withholding Tax:**

Amends O.C.G.A. § 48-2-32 allowing the imposition of a penalty equal to 10 percent of the tax due if payment was required to be made in immediately available funds such as via electronic transfer and was not. This penalty is in addition to all other penalties provided by law. Effective when signed by the Governor or July 1, 2004, whichever occurs first.

#### **Section 5 – Increase in Frivolous Return Penalty:**

Amends O.C.G.A. § 48-7-57.1 to increase the penalty to \$1,000 on an individual who files a return that reflects a frivolous position or a desire to delay or impede the administration of state income taxes. Effective when signed by the Governor or July 1, 2004, whichever occurs first.

#### **Section 6 – Innocent Spouse Provision:**

Amends O.C.G.A. § 48-7-86 related to individuals who are granted relief under Section 6015 of the Internal Revenue Code. Bill provides relief from liability for tax, interest and penalty to the extent the individual is relieved of such liability for federal income taxes pursuant to Section 6015 of the Internal Revenue Code. Effective when signed by the Governor or July 1, 2004, whichever occurs first.

#### **Section 7 – Low Income Credit:**

Amends O.C.G.A. § 48-7A-3. Prohibits individuals incarcerated within Georgia for extended periods of time from filing an individual income tax return to claim and receive a refundable low income credit. Effective when signed by the Governor or July 1, 2004, whichever occurs first.

#### **Section 8 – Streamline Sales and Use Tax Agreement:**

Amends O.C.G.A. § 48-8-161 – 48-8-166. Creates a new Article that enables Georgia to participate in the Streamlined Sales and Use Tax Project. Allows the State to take an active role in the decision making process of developing uniform definitions and procedures that will make it easier for out-of-state retailers to collect Georgia sales and use tax. Effective July 1, 2004.

#### **Section 9 – Open Records Act:**

Amends O.C.G.A. 50-18-72 to include employees of the Department of Revenue in the list of state employees protected from disclosing confidential information to the public in response to Open Records Request. Effective when signed by the Governor or July 1, 2004, whichever occurs first.

### **Alcohol/Tobacco**

#### **Gun/Badge Retention – House Bill**

**158:** Bill amends O.C.G.A. §§ 3-2-30 and 48-11-19. Allows special agents and enforcement officers to retain their weapon and badge when leaving the Department as a result of a disability arising in the line of duty. Currently, officers can retain their weapon and badge upon retirement with 25 or more years of creditable service. Effective July 1, 2004.

#### **Tobacco Distribution to Minors –**

**House Bill 653:** Bill amends O.C.G.A. § 16-12-171. Bill makes it unlawful for a minor to possess, for personal use, any cigarettes or tobacco related objects except when a parent or guardian provides the items and the possession is in the home of

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# Tax Laws Passed During 2004

## Georgia Legislative Session

the parent or guardian. Effective July 1, 2004.

**Malt Beverage Alcohol Content – House Bill 645:** Bill amends O.C.G.A. § 3-1-2. Changes the percentage of alcohol by volume in malt beverages to not more than 14 percent. Current code limits the alcohol by volume in malt beverages to not more than 6 percent. Effective July 1, 2004.

**Tobacco Products – House Bill 1282:** Bill amends Chapter 11, Title 48 concerning tobacco products.

Specifically, bill amends O.C.G.A. § 48-11-1 by adding definitions that more specifically defines cigar dealer, cigar distributor, cigar importer, cigar manufacturer, cigarette dealer, cigarette distributor, cigarette importer, cigarette manufacturer, counterfeit cigarette, loose or smokeless tobacco dealer, loose or smokeless tobacco distributor, loose or smokeless tobacco importer, loose or smokeless tobacco manufacturer and related machinery.

Bill amends O.C.G.A. § 48-11-4 related to licensing of entities engaged in the tobacco business. Adds importing and brokering to the requirement for licensing; Gives broader authority to the commissioner in promulgating rules and regulations for enforcement of this chapter; Defines a license for a manufacturer and an importer. Previously, licenses were classified as only distributor or dealer; Provides for the posting of a bond for a manufacturer's, importer's or distributor's license; Grants authority to the commis-

sioner or his or her duly appointed hearing officer to conduct hearings concerning violations arising under this chapter.

Bill amends O.C.G.A. § 48-11-5 by changing the amount of bond from not more than \$10,000 to not less than \$1,000 that an out-of-state distributor is required to post to attain or maintain licensing. This equalizes the bond requirements of in-state and out-of-state distributors. Requires all nonresident manufacturers, importers or distributors making shipments of cigars, cigarettes and loose or smokeless tobacco to distributors or dealers located within Georgia to submit reports of the shipments when and as required by rules and regulations of the commissioner.

Bill adds O.C.G.A. § 48-11-30, which defines the penalties that may be imposed concerning violations involving counterfeit cigarettes. Requires the commissioner or his or her designee to destroy all counterfeit cigarettes seized by or at the direction of the commissioner. Authorizes the sale of any related machinery seized by or at the direction of the commissioner. Effective when signed by the Governor or July 1, 2004, whichever occurs first.

## Income Tax

**Department of Corrections Offset for Debt – House Bill 67:** Bill amends O.C.G.A. §§ 48-7-161 and 48-7-163. Bill adds the Georgia Department of Corrections to the list of claimant agencies that may receive an individual taxpayer's state income tax refund to offset a debt for probation fees or debt for restitution ordered by a court. Debts greater than \$25 may be submitted by a claimant agency to the Department of Revenue for collection through setoff of an individual's income tax refund under O.C.G.A. § 48-7-161. Previously, the Department of Human Resources, Georgia Student Finance Authority, Georgia Higher Education Assistance Corporation, State Medical Education Board and the Department of Labor were the only state agencies statutorily allowed to offset debt with Georgia income tax refunds. Effective July 1,

2004.

**Job Tax Credit for Less Developed Areas – House Bill 984:** Bill amends O.C.G.A. § 48-7-40.1. Bill changes the current law on Job Tax Credit for less developed areas by: (1) adding any area comprised of one or more census tracts adjacent to a federal military installation where pervasive poverty is evidenced by a 15 percent poverty rate or greater; (2) adding any area comprised of two or more contiguous census block groups with a poverty rate of 20 percent or greater, which is included within a state enterprise zone, where a redevelopment plan has been adopted, and displays pervasive poverty, underdevelopment, general distress and blight; (3) allowing any businesses located in the area described in (2) above to claim the job tax credit without being a defined business enterprise; (4) removing the requirement that 30 percent of new full-time jobs be held by residents of the less developed area for which the credit is sought; and (5) allowing the credit to be used against 100 percent of the current income tax liability instead of 50 percent. Effective when signed by the Governor or July 1, 2004, whichever occurs first. Bill is applicable to taxable years beginning on or after Jan. 1, 2004.

**Deduction for Expenses Incurred Related to Organ Donation – House Bill 1410:** Bill amends O.C.G.A. § 48-7-27. Bill provides an exclusion for unreimbursed expenses related to travel, lodging and lost wages incurred as a direct result of an organ donation. The total exclusion may not exceed \$10,000. To qualify, the taxpayer, while living, must donate all or part of their kidney, liver, pancreas, intestine, lung, or bone marrow during the tax year the exclusion is claimed. Effective when signed by the Governor or July 1, 2004, whichever occurs first. This bill is applicable for all taxable years beginning on or after Jan. 1, 2005.

**False Claims of Independent Contractor Status – House Bill 1444** Amends O.C.G.A. § 48-7-127. Bill makes it unlawful

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# ***Tax Laws Passed During 2004 Georgia Legislative Session***

for any person knowingly to coerce, induce, or threaten an individual falsely to declare himself or herself to be an independent contractor in order to avoid or evade the withholding or payment of tax. Individuals who violate this law in connection with contracts with the State or any political subdivision thereof, upon conviction are subject to a fine equal to the amount of tax owed for the first offense. Upon conviction of the second offense, the individual is subject to a fine equal to two times the amount of tax owed. Upon conviction of the third and subsequent offenses, the individual is subject to a fine equal to four times the tax owed. Effective from July 1, 2004 through July 1, 2014.

**Disclosure of Taxpayer Information – House Bill 1461:** Amends O.C.G.A. § 48-2-15.1. Allows the Department of Revenue to disclose confidential tax-related information if the taxpayer grants express written authorization. Effective when signed by the Governor or July 1, 2004, whichever occurs first.

**Additional Job Tax credit for Joint Authorities – Senate Bill 444:** Amends O.C.G.A. § 36-62-5.1. Allows counties to belong to more than one joint authority. Also clarifies that the number of joint authorities a county belongs to will not increase the additional job tax credit amount by more than \$500 for each new full-time employee. Effective when signed by the Governor or July 1, 2004, whichever occurs first.

**False Claims of Independent Contractor Status – Senate Bill 491:** Amends O.C.G.A. § 48-7-127. Makes it unlawful for any person knowingly to coerce, induce, or threaten an individual falsely to declare himself or herself to be an independent contractor in order to avoid or evade the withholding or payment of tax. Individuals who violate this law in connection with contracts with the State or any political subdivision thereof, upon conviction are subject to a fine equal to the amount of tax

owed for the first offense. Upon conviction of the second offense, the individual is subject to a fine equal to two times the amount of tax owed. Upon conviction of the third and subsequent offenses, the individual is subject to a fine equal to four times the tax owed. This bill is effective from July 1, 2004 through July 1, 2014.

## **Property Tax**

**Notification of Impending Expiration of Conservation Use Covenant – House Bill 1103:** Amends O.C.G.A. § 48-5-7.4. Bill requires county boards of tax assessors to notify conservation use covenant holders within 60 days of impending expiration of conservation use covenants. The notice must be in writing and sent by first class mail. Effective July 1, 2004.

**Additional Land Qualifying for Conservation Use Assessment – House Bill 1107:** Amends O.C.G.A. § 48-5-7.4. Bill extends current use assessment to property adjacent to streams, which is prohibited by law or ordinance from being disturbed and serves as a buffer between the stream and the adjacent land that could be developed. Effective Jan. 1, 2005 and applicable to all taxable years beginning on or after Jan. 1, 2005.

**Additional Land Qualifying for Conservation Use Assessment – House Bill 1416:** Amends O.C.G.A. § 48-5-7.4. Bill extends current use assessment to property more than 10 acres in size which is used for wildlife habitat and where prior approved covenants are being renewed, even though prior covenants were approved under a different land use. Effective July 1, 2004.

**Homestead Exemption for Disabled Veterans and Surviving Spouses and Exemption of Certain Motor Vehicles – House Bill 1446:** Amends O.C.G.A. § 48-5-48 and adds a new code O.C.G.A. § 48-5-478.3. Bill increases the amount of homestead exemption of a disabled veteran or the surviving spouse of a disabled veteran

from \$43,000 to \$50,000 when the Department of Veterans Affairs or the Georgia Department of Veteran Service documents the 100 percent disability of the veteran. The bill also provides for an exemption of a single motor vehicle which is owned by or leased to a veterans organization whose members include at least 75 percent past or present members of the armed forces of the United States and where no part of the net earnings of the organization are used for the benefit of any private shareholder or individual. Effective July 1, 2004 for disabled veterans exemption and Jan. 1, 2005 for exemption of a single motor vehicle owned or leased to certain veteran organizations.

**Application Time Extended for Certain Members of the Armed Forces and Homestead Exemption Applications of Any Qualifying Homeowner – Senate Bill 393:** Adds a new code O.C.G.A. § 48-5-30 and amends O.C.G.A. §§ 48-5-45 and 48-5-311. Bill provides an extended application period for special assessment of property authorized in O.C.G.A. §§ 48-5-7.1 and 48-5-7.4 for members of the armed forces of the United States who are serving outside the continental United States. Such extended application period is any time within six months of the armed forces member returning to the continental United States. The bill changes the application period for homestead exemption applications to any time during the calendar year subsequent to the applicable tax year and up to March 1 of the applicable tax year. The bill also tolls for 90 days the deadline for which an individual who is absent from their residence because of duty in the armed forces to file an appeal to valuation, taxability, uniformity or denial of a homestead exemption. A family member or friend of the individual may represent the absent armed forces member in filing an appeal by submitting a written notice with the tax receiver or tax commissioner within the 90 day toll period. Effective when signed by the Governor or July 1, 2004, whichever occurs first for special assessment applications and fil-

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# ***Tax Laws Passed During 2004 Georgia Legislative Session***

ing of appeals. Effective June 1, 2005 for homestead exemption applications.

**Renewal Notice for Freeport Exemption and Statute of Limitation for Assessment of Personal Property – Senate Bill 453:** Amends O.C.G.A. § 48-5-48.1 and adds a new code O.C.G.A. § 48-5-300.1. Bill requires county boards of tax assessors to send a notice of renewal by January 15<sup>th</sup> to all taxpayers who were granted freeport exemption on personal property inventory for the previous year. Bill also provides a statute of limitation period of three years for the assessment of personal property, which was returned to the board of tax assessors. The time for assessing personal property may be extended by written agreement between the tax assessors and the taxpayer, but any agreement of extension also extends the time a claim for refund may be filed under O.C.G.A. § 48-5-380. If a taxpayer files a claim for refund within six months of the date the statute of limitations period runs, the period for assessing personal property may also be extended for six months. Effective July 1, 2004.

## **Sales and Use Tax**

**Sales and Use Tax Expansion – House Bill 709:** Amends O.C.G.A. § §48-8-6, 48-8-96, 48-8-200–48-8-212, 48-8-110–48-8-121, 48-8-122. Bill does the follow:

- Allows the Local Option Sales Tax rate to increase to two percent for consolidated governments that have frozen property tax values for the purposes of ad valorem taxes. The voters in a county must approve this rate increase. Currently, only Muscogee – Columbus Consolidated Government is eligible to call a vote for the rate increase. The one percent increase is not subject to the two percent local county cap and is not subject to sales of room accommodations or motor vehicles.

- Creates a one percent Municipal Special Purpose Sales Tax for the City of Atlanta to fund sewer projects and bond

indebtedness. The City Council can call a referendum to impose this tax only within the city if the county does not call for a countywide Special Purpose Tax to provide some funding for the Atlanta sewer projects. The municipal special purpose sales tax would be for a maximum period of four years or the cost of the sewer and water projects, which ever occurs first. The voters are allowed to continue the tax for two additional periods. Tax is not subject to the two percent local county cap and will not be subject to sales of motor vehicles.

- Amends the provisions of Special Purpose Tax to include road, street, and bridge projects as capital outlay projects; simplifies the ballot language; defines a qualified municipality for the purposes of entering into an intergovernmental agreement to share tax proceeds; and allows imposition of the tax for up to six years.

- Amends the provisions for Special Purpose and Municipal Sales Tax to require the annual audit findings to be published in the county newspaper.

Effective when signed by the Governor or July 1, 2004, whichever occurs first.

**Sales Tax Holiday – House Bill 1184:** Amends O.C.G.A. § 48-8-3(75). Bill provides for a four-day Sales Tax Holiday (July 29 – August 1, 2004) that exempts certain clothing with a sales price of \$100 or less per item, the single purchase of computers and computer related accessories that does not exceed \$1,500, and school supplies where the sales price does not exceed \$20 per item. Exemptions do not apply to rentals, sales in theme parks, entertainment complexes, public lodging establishments, restaurants, airports or to purchases for a trade, business or for resale. Effective July 1, 2004.

**Overhead Materials – House Bill 1238:** Amends O.C.G.A. §48-8-3(58). Bill amends the sales tax exemption on overhead materials used in certain federal de-

fense and National Aeronautical and Space Administration contracts to extend the sunset provision to Jan. 1, 2007. Effective July 1, 2004.

**Interest and Certificate or Letter of Exemption – House Bill 1239:** Amends O.C.G.A. § 48-2-35.1. Bill creates a new provision under refunds to bar interest on refunds when a purchaser fails to apply for or use a Certificate or Letter of Exemption issued by the Commissioner. Applies to any exemption that requires an application to be filed and a determination issued by the Commissioner. Effective July 1, 2004 and applies to any refund claim filed on or after that date.

**Poultry and Vegetable Ice – House Bill 1409:** Amends O.C.G.A. §48-8-3(78). Bill creates a new sales and use tax exemption for ice used in chilling poultry or vegetables during processing or shipment. Effective July 1, 2004.

**Review Board Established – House Bill 1415:** Bill amends O.C.G.A. §48-13-51. Creates an 11-member review board headed by the Department of Community Affairs to oversee and hear noncompliance issues reported in the annual audit of local governments imposing the accommodations excise tax and consumer complaints. The review board will review these issues during the months of September through December and give local authorities 90 days to correct any noncompliance issue(s). If the local authority fails to correct the noncompliant issue(s), the Revenue Commissioner will initiate corrective action up to and including termination of the accommodations excise tax. Effective July 1, 2004.

**Procurement – House Bill 1457:** Amends O.C.G.A. § 50-5-82. Bill creates a new code section under procurement to require any company or its affiliates bidding on a state agency contract that exceeds \$100,000 per year to register and to collect and remit Georgia sales and use tax



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# ***Tax Laws Passed During 2004 Georgia Legislative Session***

on all their retail sales occurring in Georgia. This provision will be coordinated through Department of Administrative Services and Department of Revenue to verify all sales tax registrations. Effective when signed by the Governor or July 1, 2004, whichever occurs first.

**Vendor's Compensation – House Bill 1459:** Amends O.C.G.A. §§ 48-8-50, 48-9-3, 48-9-5, 48-9-8 and 48-9-10. Bill provides for a new vendor's compensation of ½ percent of the prepaid state tax on motor fuels and increases the vendor's compensation on the motor fuel excise tax (.075 cents per gallon) from one percent of the first 5 ½ cents to one percent of the full 7 ½ cents per gallon. Bill eliminates User Distributor licenses of fuel oils (clear diesel, dyed diesel and clear kerosene) and bars interest on refunds for motor fuel taxes of clear die-

sel fuel oils used for non-highway purposes. Effective July 1, 2004.

**Symphony Hall – House Bill 1511:** Amends O.C.G.A. § 48-8-3. Bill creates a new sales and use tax exemption for materials used in direct connection with the construction of a new symphony hall facility costing \$200 million or more that is owned and operated by certain nonprofit organizations. Exemption will be effective July 1, 2004 and sunsets on Dec. 31, 2008.

**Corporation History Exemption – House Bill 1528:** Amends O.C.G.A. § 48-8-3. Bill creates a new sales and use tax exemption for any tangible personal property sold to or used in the construction of an eligible corporate attraction that is dedicated to the history and products of a corporation. Eligible corporate attractions are

any tourist attraction facility costing in excess of \$50 million, containing 60,000 square feet and having a parking lot that is constructed on or after the effective date of the exemption. This exemption contains a sunset provision of Jan. 1, 2007. Effective July 1, 2004.

**Child Care – House Bill 1744:** Amends O.C.G.A. § 48-8-3(41). Bill amends the sales and use tax exemption for orphanages to replace orphan's homes with any nonprofit child caring institute, child placing agency or maternity homes as defined by the Department of Human Resources. Bill also extends an exemption for sales by such entities. These organizations will be required to be tax exempt under I.R.C. 501(c)(3) and must obtain an exemption letter from the Department of Revenue. Effective July 1, 2004.